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Opinion

December 18, 1958

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CONCORD, N.H.

Mr. Franklin Flanders, Chairman
N. H. State Liquor Commission
109 North Main Street
Concord, New Hampshire

Dear Sir:

In a conference on this date you asked the opinion of this office whether the the State Liquor Commission may authorize the serving of liquor and beverages in the dining rooms of first-class hotels holding hotel licenses (RSA 178:3) at a time when dancing or entertainment is being conducted in such dining rooms.

Our reply is in the affirmative.

A careful search of the statutes governing the sale of liquor and beverages and the regulation thereof by the Commission discloses no legislative prohibition of the serving of these products where dancing and entertainment may be taking place. There are, as you are aware, a number of statutory provisions prescribing one or another type of condition or restriction with respect to the sale of liquor and beverages as, for example, RSA 176:11 (no liquor or beverages to be sold on Sundays or on election days, with certain exceptions, booths in which liquor or beverages are sold must be open at the end and not more than forty-two inches high); RSA 178:3 (holders of hotel licenses may sell liquor by the glass and fortified wines by the bottle to bona fide guests with meals or in guest rooms, except no sales to residents if the hotel is located in a "dry" town); RSA 178:3-a (holder of restaurant license may sell liquor by the glass and fortified wines by bottles "with meals at tables only", the minimum charge for the meals to be not less than one dollar); RSA 178:4 (special hotel license entitles holder to sell liquor and beverages in any room of the hotel but such room "shall not have an immediate entrance upon any public way"); RSA 181:4 (on-sale permit for sale of beverages authorizes sale "in the case of restaurants, at public tables . . . but only in a room used primarily for the serving and consumption of food . . . in the case of

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hotels or clubs, at tables or in rooms of guests." Other statutes deal with the personal disqualification of certain classes of individuals. Thus by RSA 175:6, liquor or beverages may not be sold to a minor, an insane person, an habitual drunkard, or to a person who is under the influence of liquor.

The foregoing is not intended to be an all-inclusive enumeration of restrictive legislation; but it is typical and illustrative of legislation in which reference to dancing and entertainment might be expected to appear if the legislature had intended to make specific provision in that regard. We reiterate that no statutory prohibition is found.

However, the Commission under the provisions of RSA 176:11 and similar statutes is authorized to make rules and regulations governing the sale of liquor and beverages. One regulation which the Commission has made is as follows:

"General Regulation No. 19. No dancing or entertainment shall be held on any permittee's or licensee's premises except as otherwise provided in the Commission's regulations." [See Pamphlet, Laws and Regulations Relative to the Sale of Liquors, Beer and Wines (January 1, 1956), page 50].

With respect to entertainment, it appears that the Commission by regulation has contemplated that the same might be allowed with specific approval of the Commission. See Hotel Regulations Nos. 9 and 10 (Pamphlet, page 50). It appears that Club Regulation No. 5 is sufficiently broad to permit dancing or entertainment in connection with authorized parties or other social functions. See Pamphlet, page 46.

In view of the fact that the only prohibition against dancing and entertainment on the premises where liquor or beverages are served is that found in the General Regulation quoted above, it seems plain that the Commission may in its discretion alter its regulations in such a way as to permit the sale of liquor and beverages by the holder of a hotel license in a room where the activities under consideration are being carried on.

Very truly yours,

LOUIS C. WYMAN
Attorney General

By

Warren E. Waters
Deputy Attorney General